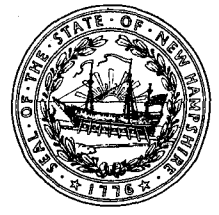


State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-2147 FAX (603) 271-6588



Todd A. Main
23 McKinley Avenue
Beverly, MA 01915

RE: 56 Fisher Road
Wakefield, NH
Wetlands Bureau File # 2001-2304

**ADMINISTRATIVE ORDER
No. WD 05-009**

April 1, 2005

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Todd A. Main pursuant to RSA 482-A:6 and RSA 483-B. This Administrative Order is effective immediately upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Todd A. Main is an individual having a mailing address of 23 McKinley Avenue, Beverly, MA 01915.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "No person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from the department."
3. RSA 482-A:14-b, I provides that "Whoever fails, neglects or refuses to comply with this chapter or rules adopted under this chapter, or an order or condition of a permit issued under this chapter, or misrepresents any material fact made in connection with any activity regulated or prohibited by this chapter, whether or not the owner of the land in question, shall be liable for the removal of fill, spoil or structure placed pursuant to such a violation and the restoration of any wetlands disturbed in connection with the violation."

4. Pursuant to Wt 101.07, a beach means “a sloping shore of a surface water body consisting of sand, gravel, or cobble extending from adjacent upland/wetland to or in a surface water body.”
5. Pursuant to Wt 304.08, a size of a new beach for a single residence shall not exceed 900 square feet or utilize more than 20% of the contiguous shoreline frontage on the property.
6. Pursuant to RSA 483-B:9, V(c), “All new structures, modification to existing structures, and excavation or earth moving within the protected shoreland shall be designed . . . to manage stormwater and control erosion and sediment.”
7. “The New Hampshire Official List of Public Waterbodies” as published by DES includes Belleau Lake.
8. Todd A. Main is the owner of a waterfront property located on Belleau Lake in Wakefield, NH, more particularly identified on the Town of Wakefield Tax Map 56 as Lot 1-J (“the Property”).
9. James Fortin is the previous owner of the Property.
10. On November 20, 2001, while inspecting a neighboring property, DES personnel noticed sand placed on the shoreland of the Property. DES personnel conducted a field inspection on the Property and observed the following:
 - a. Approximately 1,564 square feet of unstable sand extending from the lakeside of the residence, down slope, to the high water mark of Belleau Lake;
 - b. Sand covering approximately 46 linear feet of bank along Belleau Lake; and
 - c. Approximately 400 square feet of sand below the high water mark.
11. On January 4, 2002, DES personnel called Jim Fortin and informed him that the Property was not in compliance with RSA 482-A and he would need to install silt fencing, remove the sand from the lake, and apply for a permit to construct a perched beach to bring the Property into compliance.
12. Also during the January 4, 2002 phone call, Mr. Fortin asked if he could build a masonry wall along the shoreline for aesthetic reasons. DES personnel explained that a permit would be needed to build such a wall and that in this case it was unlikely that a permit would be issued, as the shoreline was stable and vegetation could be used to increase stabilization if necessary.
13. On January 4, 2002, the DES Wetlands Bureau sent a letter to Mr. Fortin further detailing what needed to be done to bring the Property into compliance. The following requests were made:
 - a. “As soon as possible and before the lake level rises, install a row of silt fencing down slope of the existing sand.”
 - b. “Remove the sand from below the high water line and place it out of the Wetlands Bureau's jurisdiction. If you stockpile the material onsite, use siltation control

measures to ensure that it does not erode into the lake. If you use machinery to perform the restoration, please keep the machinery out of the lakebed."

- c. "Submit an application for a perched beach. Enclosed is some literature explaining what the Bureau can permit. Prompt submittal of the application will ensure that you have the permit by next spring when you are ready to begin work. Please refer to file number 2001-2304 when you submit the application."
- d. "Stabilize the exposed sand around the house and upslope from the high water mark by loaming and seeding. The exposed sand will continue to erode into the lake unless it is stabilized. As a temporary measure, install another row of silt fencing just below the house to prevent further erosion into the lake."
- e. "Submit photographs to the Bureau by June 1, 2002, showing both rows of siltation fencing in place and the restored lakebed with the sand removed."

14. The January 4, 2002 letter from DES also stated, "... the Bureau generally does not permit construction of new retaining walls on public water bodies. Where there is a need for the shoreline to be stabilized, vegetative stabilization is the preferred method. In this case, the shoreline is stable; the issue of eroding soils arises from the sand placed around the house and the steep slopes in the area."

15. On June 17, 2002, the DES Wetlands Bureau sent a follow-up letter to Mr. Fortin stating, "DES has received neither an application for a perched beach nor photographs showing the sand has been removed." The letter also stated that a copy of the previous letter sent on January 4, 2002 to Mr. Fortin was enclosed and requested that Mr. Fortin contact the department with an update.

16. On February 20, 2003, the DES Wetlands Bureau sent a letter to Mr. Fortin stating that no response had been received from Mr. Fortin to date and that a site inspection was scheduled for the Property.

17. On May 6, 2003, DES personnel conducted a site inspection on the Property and documented the following deficiencies:

- a. The site was sandy and remained unstable;
- b. A series of timber planks had been installed along the shoreline and sand was migrating over the planks and onto the bed of the lake; and
- c. A landscaping block wall had been extended down along the western edge of the property toward the shoreline and sand was migrating through a gap between the stone wall and the timber planks into the bed of the lake.

18. On May 20, 2003, Mr. Main contacted the DES Wetlands Bureau to find out the status of the enforcement case on the Property and stated that he was now the property owner.

19. Also on May 20, 2003, DES personnel faxed Mr. Main the letter originally sent on January 4, 2002 to Mr. Fortin, which included the requested actions to bring the Property into compliance.

20. On June 30, 2003, DES sent a follow-up letter to Mr. Main which stated that no response had

been received from Mr. Main since his previous contact with DES on May 6, 2003. The letter advised Mr. Main to contact DES by July 7, 2002 [sic] with an update.

21. Mr. Main did not contact DES as requested in the June 30, 2003 letter.

22. On March 18, 2004, the DES Wetlands Bureau issued a Letter of Deficiency (LOD) to Mr. Main. The LOD outlined the history of the enforcement case on the Property including:

- a. The deficiencies observed during the November 20, 2001 and May 6, 2003 site inspections;
- b. Prior requests from DES to Mr. Fortin and then to Mr. Main to correct the deficiencies; and
- c. Prior requests to Mr. Fortin and Mr. Main to contact DES after receiving no response or updates.

23. The LOD issued on March 18, 2004 also included requests to submit the following:

- a. An after-the-fact application for a perched beach on the Property within 30 days; and
- b. A restoration plan prepared by a qualified professional including provisions for restoring the unvegetated shoreline on the Property, removing sand that has migrated into the lake bed, and installing erosion controls within 30 days.

24. The LOD issued on March 18, 2004 also included a request to, "Implement the restoration plan only after receiving written approval and as conditioned by DES."

25. Mr. Main received the LOD by certified mail on March 24, 2004.

26. On March 24, 2004, Mr. Main contacted the DES Wetlands Bureau and gave the following update:

- a. He had pulled out a lot of sand.
- b. Sand had migrated back down into the lake.
- c. He planned to pull out more sand.
- d. He stopped the retaining wall project.

27. On July 16, 2004, DES received photographs of the Property from Mr. Main showing the following:

- a. One of the timber planks along the shoreline had been removed;
- b. Erosion control devices had not been installed; and
- c. Sand continues to migrate down slope onto the bed of the lake.

28. On June 22, 2004, DES received a letter from Mr. Main which included the following information:

- a. Prior owners of the lot, the Rileys', had put in the house foundation and carried out all the land clearing on the property. This work ceased in 1984.
- b. The Rileys sold the property to James Fortin in the May of 1999.
- c. Mr. Fortin "connected with" Mr. Main to help build the house and during this time they brought in a truckload of "fine sand" that was "spread over the coarse sand at what is now the beach area."
- d. Mr. Main purchased the property from Mr. Fortin in "approximately March 2002."

29. Also in the June 22, 2004 letter, Mr. Main made the following statements:

- a. "In May of 2003 I moved the sand that seeped into the lake and stored it on site."
- b. "I built a make shift retaining wall that is not very effective."
- c. "I would like to comply with all the requirements, but do not feel that re-planting and re-forestation are part of the fix as any damage preceded me and Mr. Fortin by many, many years."

30. On November 4, 2004, Mr. Main called DES to inquire about the compliance case on the Property. During this conversation he stated that he wanted to do what was right but did not want to restore what was not there to begin with. It was explained to Mr. Main that something would have to be done to stabilize the exposed soils once the sand was removed and that seeding and mulching would be an alternative.

31. Also on November 4, 2004, DES personnel informed Mr. Main that another letter would be issued further describing what needed to be done to resolve this issue and requesting the submittal of a restoration plan to the department within 30 days.

32. Also on November 4, 2004, Mr. Main stated that he was planning to put up a silt fence on the Property that coming weekend.

33. On November 19, 2004 the DES Wetlands Bureau sent a letter to Mr. Main requesting the following:

- a. "Within 7 days of receipt of this Letter of Deficiency, submit photos mounted onto 8.5" x 11" white paper, documenting the installation of a silt fence between the lake and the beach and silt fence between any other jurisdictional areas in need of protection from the sand (ex. wetlands, streams)."
- b. "Within 30 days of receipt of this Letter of Deficiency, submit a restoration plan to DES for review and approval for the area where sand must be removed and soils stabilized and restored. The plan shall include a birds-eye view of the property showing:
 - i. A scale if used;
 - ii. If a scale is not used, the dimensions of all property boundaries, impact areas, and primary and accessory structure footprints;

- iii. A north pointing arrow;
- iv. Property boundaries;
- v. The reference line (the mean high water mark or if dammed the waterline at full pond);
- vi. Tax map # and lot #;
- vii. Lake name;
- viii. Footprint of existing primary structure and any proposed changes to this footprint; Footprint of existing accessory structures and any proposed accessory structures;
- ix. Area of impact (where sand will be removed including area in lake bed and upland of lake);
- x. Location of silt fence (to remain until impacted area is stabilized);
- xi. Type of grass seed mix to be used to stabilize exposed soils (efforts to use local mixes and avoid invasive species);
- xii. Location and type of erosion controls to be used on exposed soil areas until area revegetates and/or naturally stabilizes (ex. Mulch or hay.);
- xiii. If sand is to be removed from jurisdictional area to another part of the property, how the sand will be stabilized to prevent it from eroding back into lake;
- xiv. Location and plans to remove the retaining wall/ timber;
- xv. How sand will be removed from the lakebed and upland areas;
- xvi. Type of fertilizer to be used if any. (Note* RSA 483-B, the Comprehensive Shoreland Protection Act, states that limestone shall be the only type of fertilizer used within 25 ft of the reference line/shoreline. Low or no phosphorus fertilizer shall be the only fertilizer used from 25 ft - 250 ft beyond the reference line.); and
- xvii. Timeline of restoration including start dates of action, completion dates, dates of submission of monitoring progress reports/photographs documenting the completion of work and growth over one growing season."

34. A review of DES records revealed that a wetlands permit was not issued for the creation of a beach on the Property, for placement of sand on the bed of Belleau Lake adjacent to the Property, or for the construction of a retaining wall on the shoreline of the Property.

35. To date, DES has not received a restoration plan or photographs documenting installation of erosion controls from Todd A. Main, nor has Mr. Main been in contact with the DES Wetlands Bureau since the issuance of the letter on November 19, 2004.

D. DETERMINATION OF VIOLATIONS

1. Todd A. Main has violated RSA 483-B:9, V(c), by creating a beach within the protected shoreland of Belleau Lake while neglecting to manage for stormwater and control erosion and

sedimentation.

2. Todd A. Main has violated RSA 482-A:3, I, by causing approximately 400 square feet of sand to be placed below the high water mark within public waters of the state without a permit.
3. Todd A. Main has violated RSA 482-A:3, I, by placing approximately 1,564 square feet of sand along 46 linear feet of bank adjacent to Belleau Lake without a permit.
4. Todd A. Main has violated Wt 304.08, by creating a beach at a private residence which exceeds 900 square feet and by utilizing more than 20% of the contiguous shoreline on the Property for the beach.
5. Todd A. Main has violated RSA 482-A:3, I, by installing a retaining wall along the shoreline of Belleau Lake without a permit.

E. ORDER

Based on the above findings, DES hereby orders Todd A. Main as follows:

1. **Within 10 days** of receiving this Administrative Order, submit evidence to DES verifying that a qualified professional has been retained to develop a restoration plan and oversee the project in accordance with the guidelines set below.
2. **Within 30 days** of receipt of this Administrative Order, submit to DES, for review and approval, a restoration plan for the Property. The restoration plan shall be prepared by a qualified professional and include provisions to remove all the placed sand, to remove the timber plank retaining wall, and to stabilize the site. Submit the following with the restoration plan:
 - a. A plan with dimensions, drawn to scale, showing:
 - i. Existing conditions, including the reference line (the mean high water mark or if dammed the waterline at full pond), property lines, existing structures, and area of impact; and
 - ii. Proposed conditions after completing restoration.
 - b. A detailed description of the proposed means of erosion control (silt fence, hay bales, etc.) and stabilization of the restoration area and any stockpiles of sand on the Property;
 - c. Photographs mounted on 8.5' x 11' white paper showing a properly installed silt fence on the shoreline of the Property or some other effective form of temporary erosion control.
 - d. A detailed description the proposed planting plan including:
 - i. Details for the stabilization and revegetation/seeding of the restoration

- area;
 - ii. Methods to control invasive species such as purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*); and
 - iii. If applicable, type of fertilizer to be used in accordance with the Comprehensive Shoreland Protection Act, RSA 482-A.
- d. A description of the proposed construction sequence, methods for accomplishing restoration, and the anticipated restoration compliance date.
- e. A monitoring schedule, including submittal of at least two restoration monitoring reports by a qualified professional to the DES Wetlands Bureau. The reports should document restoration and stabilization of the site as well as a failure response strategy.
3. Implement the restoration plan only after receiving written approval and as conditioned by DES. All restoration actions shall be completed by **no later than May 31, 2005**.
6. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Stacey Herbold, Wetlands Bureau
DES Water Division
29 Hazen Drive
PO Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588
email: sherbold@des.state.nh.us

F. APPEAL

Any person aggrieved by determination D.1. of this Order may appeal the determination to the New Hampshire Water Council in accordance with RSA 483-B:14 and Env-WC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

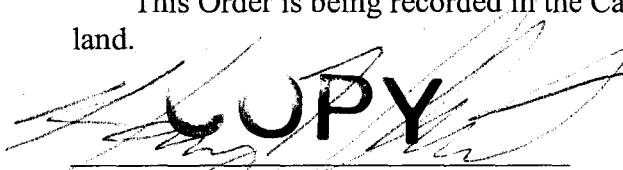
Any person aggrieved by determinations D.2. through D.5. of this Order may request DES to reconsider the determinations within 20 days of the date of the Order. The request for reconsideration must describe in detail each ground for the request. DES may grant a rehearing if, in its opinion, good cause is demonstrated by the request. Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.


Filing an appeal or motion for reconsideration of the Order, in whole or in part, does not automatically relieve Todd A. Main of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 482-A and RSA 483-B provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Mr. Todd A Main remains obligated to comply with all applicable requirements, in particular restoration and stabilization of the site. DES will continue to monitor Todd A Main's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Carroll County Registry of Deeds so as to run with the land.


Harry T. Stewart, P.E., Director
Water Division


Michael P. Nolin, Commissioner

Certified Mail/RRR: 7002 3150 0001 5411 2439

cc: Gretchen R. Hamel, Administrator, DES Legal Unit
Public Information Officer, DES Public Information Center
Jennifer Patterson, Senior Asst. Attorney General, EPB, NHDOJ
Carroll County Registry of Deeds
Wakefield Selectmen
Wakefield Conservation Commission
File # 2001-02304